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IN

The Supreme Court

OF THE

UNITED STATES.

October Term, A. D. 1897.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON AND STATE OF COLORADO,

Petitioner,

vs.

E. H. ROLLINS & SONS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO U. S. CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

F. C. REID & CO., PRINTERS, 1409-11 LAWRENCE ST., DENVER.

IN THE SUPREME COURT OF THE UNITED STATES.

To the October Term, A. D. 1897.

To the Honorable, the Supreme Court of the United States, and the Judges thereof:

I.

Comes now the Board of County Commissioners of the County of Gunnison and the State of Colorado, and petitions this honorable Court for a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause lately therein depending, entitled E. H. Rollins & Sons, Plaintiffs in Error, versus The Board of County Commissioners of the County of Gunnison, your petitioner, Defendant in Error, said cause being in error to the Circuit Court of the United States for the District of Colorado, and which said cause was and is numbered 856 on the docket of said Court, and in which a decision was by the said Court heretofore and at the May term, A. D. 1897, thereof duly entered, reversing the judgment of the Circuit Court of the United States for the Eighth Judicial Circuit in and for the State of Colorado theretofore rendered in said cause, all of which more fully appears in the record of the proceedings in said cause in said Court of Appeals.

II.

That this application is made under the terms and provisions of Section 6 of the act of Congress of March 3, A. D. 1891, and entitled "An act to establish a Circuit Court of Appeals and to define and regulate in said cases the jurisdiction of the Circuit Court of the United States, and for other purposes."

III.

That the said plaintiff in error filed its complaint in said cause in the said Circuit Court of the United States for the District of Colorado on, to wit, the 1st day of March, A. D. 1895, against your petitioner, the said Board of Commissioners of the County of Gunnison, and in and by its said complaint it declared that it was a corporation duly organized under the laws of the State of New Hampshire; that your petitioner was a municipal corporation, organized and existing under the laws of the State of Colorado since the 9th day of March, 1877; that by the laws of said State, the said Board of County Commissioners, your petitioners aforesaid, was authorized to examine and settle all accounts of receipts and expenses of the county, and examine, settle and allow all accounts chargeable against it, and to issue county warrants therefor, when so settled, to build and keep in repair county buildings and to have the management generally of the business and concerns of the said county, where not otherwise provided by law.

That the said defendant further alleged in said complaint that your petitioner, the said Board

of Commissioners, on the 1st day of December, 1882, caused to be made and executed certain bonds, a copy whereof was set forth in said complaint and in which the said County of Gunnison was alleged to have acknowledged itself indebted, and promised to pay to the bearer $1,000, lawful money of the United States, for value received, redeemable at the pleasure of your petitioner after ten years and absolutely due and payable twenty years from the date thereof at the office of the Treasurer of said county, in the city of Gunnison, with interest at the rate of eight per cent per annum, payable semi-annually upon presentation and surrender of annexed coupons as they should become due; that said bonds were issued by your petitioner in exchange at par for valid floating indebtedness of said county outstanding prior to September 22, 1882, in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved February 21, 1881, all the requirements of which were certified to have been fully compled with by the proper officers in the issuing of said bonds; that the total amount of the said issue did not exceed the limit prescribed by the Constitution of the State of Colorado, and that the issue of bonds was authorized by a vote of a majority of the duly qualified electors of said county at a general election on November 7, A. D. 1882; that the bonds of the said issue were comprised in three series, designated A, B and C, respectively, those of series A being for $1,000 each, those of series B for $500 each and those of series C for $100 each, the faith and

credit of said county being thereby pledged for the punctual payment of the principal and interest of said bonds.

The said plaintiff in error also alleged in said complaint that to each of said bonds were attached coupons for the semi-annual interest, in and by which the County of Gunnison promised to pay the bearer $40 at the office of the County Treasurer, or of the Chase National Bank in the City of New York at the maturity thereof, being six months interest on funding bonds, and that there was a sufficient number of coupons attached to each of said bonds, in form as therein set forth, to provide for the payment of all the interest on said bonds.

And the plaintiff in error further alleged in said complaint that on December 1, 1882, your petitioner made an exchange with parties then holding county warrants before then issued, in accordance with the statute made and provided and in settlement of claims presented by them against the county for the bonds thereof with coupons attached, said exchange being made at par for the face and interest of such warrants, and, in such cases, the blanks were filled out with the name of the party receiving the bonds and the blank for the place of payment filled in as the banking-house of the Chase National Bank in the City of New York; that said bonds were signed by the chairman of your petitioner, and countersigned by the County Treasurer of said county, and attested by the County Clerk thereof, with the seal thereunto attached; that at the time of issuing said

bonds as therein set forth, the amount thereof had been authorized by a vote of the qualified electors to be exchanged therefor, which amount was spread upon the records of the said county, as provided for by the act as in said bonds referred to, and that in all other respects, all the terms and conditions of said act were fully complied with, and that said bonds were duly registered in the office of the Auditor of the State of Colorado.

That said plaintiff in error further alleged that wherever said bonds were issued and delivered to the payees therein named, they were received by said parties in exchange for said warrants, the amount of the bonds being the same as the amount of the warrants and interest thereon, which theretofore had been issued by said county, and that the said County of Gunnison from that time until about the 1st day of March, A. D. 1886, paid the interest on said bonds semi-annually in accordance with the terms thereof and of the coupons thereto attached, and that on the 1st day of September, A. D. 1886, the said county made default in the payment of said coupons and neglected and refused to pay the same, and ever since has refused and still refuses to pay said interest; and that the said county made similar default on the 1st day of March, A. D. 1887; the 1st day of September, A. D. 1887; the 1st day of March, A. D. 1888; the 1st day of September, A. D. 1888; the 1st day of March, A. D. 1889; the 1st day of September, A. D. 1889; the 1st day of March, A. D. 1890; the 1st day of September, A. D. 1890; the 1st day of March, 1891; the 1st day of September, 1891; the 1st day

of March, 1892, and the 1st day of September, 1892, in the payment of said coupons, and has since refused and still refuses to pay said interest due on said bonds.

And the plaintiff in error further alleged that it was the holder and owner of coupons formerly attached to and belonging to certain of said bonds numbered 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 which were, at the time of the issuance thereof, attached to certain of said bonds of series A, said coupons being for the sum of $40 each, and the bonds being numbered 9, 10, 11, 12 and 13, 64, 65, 66 and 98, and that it became the purchaser of said coupons before the same became due for a valuable consideration paid by it, and without notice of any claim at law or in equity affecting their validity, wherefore, it prayed judgment against the defendant in the sum of $5,200, together with interest on said coupons to the date of judgment.

IV.

Your petitioner further declares that after wards and on, to wit, the 10th day of September A. D. 1895, your petitioner by its attorneys filed it answer to the said complaint, denied each and every allegation therein contained except its own and the corporate capacity of the plaintiff, and the organization of the latter under the laws of the State of New Hampshire, and alleged that the said coupons therein described and the said bonds thereby represented were each and all illegal and void, because they were made and issued on the

1st day of December, 1882, and purported to have been made and issued under the provisions of the act of the General Assembly of the State of Colorado, entitled an act to enable the several counties of the State to fund their floating indebtedness, approved February 21, 1881; that said bonds, with said coupons attached, were issued in an attempt to fund floating claims against Gunnison County which were illegal and void, and represented by county orders or warrants; that said claims originated and said warrants were issued after the adoption of Section 6, Article XI., of the Constitution of Colorado, adopted in the year 1876; that none of said warrants or any claims represented by them were contracted or made for the purpose of erecting public buildings, nor was the question of incurring or contracting the alleged debts or any of them represented by said warrants ever in any manner submitted to the electors of the county; that at the various times when the said claims originated, and when the said warrants were issued, the assessed valuation of the taxable property of said county amounted to $1,000,000, and did not exceed $5,000,000, as shown by the assessment rolls thereof; that when each and every of said claims originated and said warrants issued, the said county already had, exclusive of all debts contracted or incurred prior to the adoption of said section of the Constitution, and exclusive of all debts contracted to erect public buildings or making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than $6 on the

thousand dollars of the assessed valuation of taxable property in the county, as shown by the assessment rolls thereof, and that all of said claims and warrants were in excess of said constitutional limitation, the said county having no power or authority to contract said claims or issue said warrants or any of them, in consequence whereof they were and are wholly illegal and void.

And your petitioner in said answer did further aver that at the time of the issuance of said bonds and coupons and when all things were done which were done under the provisions of said act of the said General Assembly, the said County of Gunnison already had, exclusive of all debts contracted prior to the adoption of said Constitution, and of and for the purpose of erecting public buildings and making and repairing public roads and bridges, an outstanding, valid and subsisting indebtedness amounting to more than $6 on each $1,000 of the assessed valuation of taxable property of said county, as shown by the assessment rolls of said county for the year 1882, and that the question of contracting or incurring the alleged indebtedness represented by said warrants and bonds was never, in any manner, submitted to the electors of the county, and that each and every of said bonds and coupons sued on were issued in excess of the limit prescribed by Section 6, Article XI., of the Constitution, and, therefore, illegal and void.

And your petitioner also averred in said answer that while Section 1 of the said act of the General Assembly provided, *inter alia*, that the

amount of floating indebtedness of the county at a given time should be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county, and while the County Commissioners did undertake to determine the amount of such floating indebtedness of the county, and did make a certificate purporting to show the amount thereof, and did make the same a part of the records of the county, such certificate, so made a part of the records of the county, showed the amount of such floating indebtedness to be $174,115.29, while the assessed valuation of the taxable property within the county at that time, as shown by the assessment roll thereof for the year 1882, was $2,304,955, and that the said certificate so made, and made a part of the records of the county, was entered of record on the 18th day of November, 1882, and has ever since been and now is a public record of the county and subject to the inspection of all persons.

Your petitioners also averred in said answer that the true intent and meaning of Section 1 of said act of February 21, 1881, was that the Commissioners should determine and certify in manner aforesaid, and make public record of the amount of floating claims in the form of county warrants existing against the county, irrespective of any question as to the validity of said claims as affected by the provisions of the Constitution; and that such certificate and record and the assessment roll of the county for said year should impart notice to all persons that the said County

Commissioners were not empowered by said act, nor by any other law, to determine or certify in any manner, either in the bonds to be issued or otherwise, that the bonds were in exchange for floating indebtedness of the county, or that the issue was in full conformity with the provisions of the act of February 21, 1881, or that the amount of such bonded issue did not exceed the limit prescribed by the Constitution of the State of Colorado, or that the said issue of bonds had been authorized by a vote of a majority of the qualified electors of the county, or that the faith or credit of the county was pledged for the payment of said bonds, and that any and all such recitals were made without any authority of law, and were, therefore, null and void.

And your petitioner, in a third and further defense to the said complaint, alleged that the said bonds and coupons were illegal and void for the reasons thereinbefore set forth, and did also aver that, although by Section 1 of said act of February 21, 1881, it was, *inter alia*, provided that the whole amount of bonds issued under said act should not exceed the sum of the county indebtedness at the date of the first publication of the aforementioned notice, and the amount should be determined by the County Commissioners, and a certificate made of the same, and made a part of the records of the county, and that while the County Commissioners of the county did make what purported to be a certificate of the amount of such indebtedness, in the sum of $174,115.29, and made the same a public record, yet that said

Commissioners had no power or authority of law to determine or attempt to determine the amount of such indebtedness, or certify or attempt to certify, in any manner whatever, either in the bonds to be issued under the provisions thereof or otherwise, because the said provisions of Section 1 of said act of February 21, 1881, in so far as the same undertook to confer upon said Commissioners power and authority to determine the amount of floating or other indebtedness of the county, or to make a certificate thereof, or to make the same a part of the records of the county, or to determine or certify the amount of floating or other indebtedness of the county, for the purpose of, or connected with, the issuance of bonds under said act, was in conflict with Section 6 of Article XI. of the Constitution of said State, and, therefore, unconstitutional and void, inasmuch as it would otherwise confer power and authority upon the said Board to determine and certify to void and fictitious indebtedness, and thus estop the county from pleading the truth as against such claims, and that the recitals contained in the bond to said effect were, therefore, beyond the power of said Commissioners to make.

And your petitioner further declares that in said answer it filed a fourth and additional defense to the said complaint, in which it alleged the said bonds and coupons thereon to be void, for the reasons theretofore set forth, and because the provisions of said act of February 21, 1881, in so far as the same undertakes to confer upon the County Commissioners power or authority to de-

termine the amount of indebtedness of the said county to make a certificate thereof, and to make the same a part of the records of the said county, is unconstitutional and void, and the issuance of bonds by said Commissioners under said act, in exchange for invalid or void claims, was null and void, any recitals on the face of the bonds to the contrary, notwithstanding.

And your petitioner further declares that in and by said answer it filed a fifth and further defense to the said plaintiff's complaint, in which it alleged the said several coupons and bonds represented thereby to be void and illegal for the reasons hereinbefore set forth, and also because the question of funding the valid indebtedness of said county was never submitted to the vote of the qualified electors of said county, and that the recital in said bond to the effect that such submission was had, cannot estop the county from setting up said defense, because said recital was made by the said Commissioners of said county under the said act of February 21, 1881, which was and is unconstitutional and in conflict with said Section 6 of Article XI. of said Constitution, because the power to make such recital in said bonds, if binding upon the taxpayers of said county, would defeat and render wholly nugatory the terms and provisions of said section of the Constitution.

And your petitioners further declare that in said answer they filed a sixth and further defense to the said complaint and alleged the said bonds and coupons to be void and illegal for the reasons hereinbefore set forth and because the alleged in-

debtedness exchanged for the said bonds were void, because they had been issued by the County Commissioners of said county after its constitutional limit of indebtedness had been reached and passed, and were, therefore, without any consideration whatever, and the bonds and coupons issued therefor were also illegal and void.

And your petitioner did further allege in said sixth answer that in the year A. D. 1880 the said Commissioners of said Gunnison County, acting under the provisions of an act of the General Assembly of the State of Colorado, entitled an act concerning counties, county officers and county government, etc., approved March 24, 1877, caused to be issued and sold, for the purpose of erecting necessary public buildings and making and repairing public roads and bridges, county bonds of the amount of $20,000, which said bonds were issued in all respects as required by law, and all the matters and things connected therewith have ever since been and now are matters of public record and subject to the inspection of all persons, and said bonds have ever since their issue been and now are an indebtedness of said county.

That under and pursuant to the provisions of Section 30 of said act of March 24, 1877, the County Commissioners of said county at regular sessions of the Board in January and July in the year 1882, made out semi-annual statements of the amount of indebtedness, and at said respective times caused said statements to be published as provided for by said act; that each of said semi-annual statements showed the amount of debt owing

by the county, in what said debt consisted, what payments had been made upon the same, when any payments had been made, the rate of interest which said debts were drawing and a detailed account of receipts and expenditures of the county for the preceding months, and in which it was shown from what officer and on what account any money had been received, and the amounts and to what individuals, and on what account any money had been paid, and the amounts, and in each of said statements a balance was struck showing the amount of the deficit, and that each of them were, as provided by said section, entered of record by the Clerk of the Board of Commissioners in a book by him kept for that purpose only; said book being a public record and open to the inspection of all persons at all times; that in each of said semi-annual statements made after the issue of said $20,000 building, road and bridge bonds, the indebtedness represented by said bonds was clearly shown, and in each of said statements it was further shown, aside from said indebtedness represented by said bonds theretofore contracted by the county during said year 1882 and prior to the making and recording of said statement, exceeded the said limit, and that said semi-annual statements and the matters therein contained were true, and that the purchasers and holders of said bonds, including the plaintiff, took the same with notice of the fact, as shown by the said public records and the assessment rolls of said county, that said bonds and the said claims upon which they

were based were void, because in excess of said constitutional limit.

And your petitioner further declares that in said answer it filed another and additional defense, in which it alleged the said bonds and coupons to be void for the reasons aforesaid, and also because the said act of February 21, 1881, under which the said bonds were issued, was unconstitutional in that it undertook to empower the County Commissioners to issue negotiable bonds of the county for an indebtedness for claims not contracted for the purpose of erecting necessary public buildings, nor for the making or repairing of public roads or bridges.

And your petitioner further declares that in said answer it alleged an additional and further defense to the said plaintiff's complaint, in which it declared the said bonds and coupons to be illegal and void for the reasons hereinbefore stated, and also because the record of the County Commissioners made under said act showing the indebtedness of said county to be $174,115.29, and which determination was made a part of the records of said county on, to wit, the 30th day of August, 1882, was and is notice to all persons at any time holding said bonds, of the invalidity and void character thereof, when taken in connection with the assessment roll of said county for the year 1882, and the prior assessment rolls thereof, and that, in consequence thereof, the said bonds and coupons were and each of them is null and void.

And your petitioner further declares that in its said answer it filed an additional and further

defense to the said plaintiff's complaint, in and by which it alleged the said bonds and coupons to be illegal and void for the reasons hereinbefore stated, and also because the said bonds were divided into three series, A, B and C, those of series A being for the sum of $1,000 each, those of series B being for the sum of $500 each and those of series C for the sum of $100 each; and that of such bonded issue the bonds of series A were numbered consecutively from 1 to 154, as required by said act; and that the bonds of the plaintiff belonged to said series and were numbered, respectively, 9, 10, 11, 12, 13, 63, 64, 65, 66 and 98; that the total contracting power of the county in 1882, under the assessed valuation thereof, was $13,829.73, and any debt contracted or bond issued in excess of said amount was void, and that the purchaser of any of said bonds of series A, the number of which was above thirteen, took the same with notice on the face thereof, and indicated by the number thereof, that the same was void, because in excess of said constitutional limit, the said number being notice to all persons that the limit had, as aforesaid, been exceeded.

And your petitioner further declares that in said answer it filed another and additional defense to the said action in and by which it alleged that the said bonds and coupons were void for the reasons hereinbefore stated, and also because the question of incurring the alleged indebtedness represented by the warrants exchanged for said bonds was never in any manner submitted to the electors of said county as required by Section 6 of Article

XI. of the Constitution, and that the said bonds and coupons were, therefore, illegal and void, and that the plaintiff in obtaining the said coupons took the same with actual notice and knowledge of all facts pleaded by your petitioner, and that all former holders thereof took the same with like notice and knowledge.

And your petitioner further declares that in and by said answer it filed an eleventh and further defense to the plaintiff's complaint, in which it alleged that all coupons sued on and described in said complaint, and which matured on or before the 1st day of March in the year 1889, and prior thereto were barred by the statute of limitations of the State of Colorado, for the reason that the cause of action did not accrue upon any of said coupons within six years next before the commencement of suit, and that said answer was duly verified by J. K. Hinkle for your petitioner on, to wit, the 30th day of August, A. D. 1895.

And your petititioner further avers that afterwards and on, to wit, the 7th day of November, A. D. 1895, the said plaintiff filed a general replication to said answer and denial of each and every of the allegations therein contained.

V.

Your petitioner further represents and declares that after the filing of said answer and replication and, to wit, on or about the 19th of May, 1896, at the May term, A. D. 1896, of said United States Circuit Court for the said District of Colorado, the said cause came on to be heard

upon the issues tendered by said complaint, answer and replication, and, a jury having been impaneled, the plaintiff and defendant gave evidence in support of their respective issues, whereupon and on, to wit, the 20th day of May aforesaid, the Court instructed the jury to render a verdict for your petitioner, the said defendant, which was by said jury done.

And thereupon the Court entered judgment in said cause for the defendant, your petitioner, and against the plaintiff, the said E. H. Rollins & Sons.

VI.

That afterwards and on, to wit, the 17th day of August, A. D. 1896, a writ of error duly issued to the said United States Circuit Court for the District of Colorado, commanding the said Court to have the record and proceedings in said cause at the city of St. Louis, Mo., and filed in the office of the Clerk of the United States Circuit Court of Appeals for said Eighth Circuit on or before the 16th day of October, A. D. 1896, to the end that the said record and proceedings should be inspected as provided by law.

VII.

That afterwards and, to wit, on the 30th day of September, A. D. 1896, a transcript of the said record pursuant to the said writ of error was duly lodged in the office of the Clerk of the said Court of Appeals of the said Eighth Circuit and a printed transcript of the record aforesaid was thereafter by said Clerk duly prepared in accordance with the

rules of said honorable Court, copies of which, as required by the rules of this honorable Court, are herewith filed for its convenience.

VIII.

That afterwards and on and at, to wit, the May term, A. D. 1897, of the said honorable Court, and after due argument thereof, the said Circuit Court of Appeals reversed the said judgment of the said United States Circuit Court for the said District of Colorado in said cause and remanded the same to said Court for a new trial, whereby the said judgment of the said Circuit Court for the said District of Colorado was set aside and for naught held.

IX.

Your petitioner further declares that in and by the decision and opinion of said Circuit Court of Appeals, and as appears from the record of said Court herewith transmitted, that the said Court in reversing the said judgment of the said Circuit Court of the United States for the District of Colorado decided and determined the said judgment of said Court to be erroneous, because the said Court erred in permitting your petitioner to offer in evidence three statements purporting to be financial statements of Gunnison County, Colorado, for the six months ending respectively on December 31, 1881, June 30, 1882, and December 30, 1882. To each of these statements a certificate of the Board was appended, reciting that it was a full, true and correct statement of Gunnison County's financial condition for the period covered

thereby, as the same appeared in the records of Gunnison County in book of statements. These statements showed the total indebtedness of Gunnison County, consisting of bonds and warrants, to have been $77,559.01 on December 31, 1881; $118,691.49 on June 30, 1882; and $284,763.05 on December 30, 1882.

They also showed on what account debts had been incurred by the county during the period which they covered, and the names of the persons and firms in whose favor warrants had been drawn, and were prepared in compliance with Section 30 of the act of the Legislature of Colorado of March 4, 1877, entitled "An act concerning counties, county officers and county government, and repealing laws on these subjects."

Your petitioner further avers that the exception to the introduction of these statements was by the said honorable Circuit Court of Appeals declared to present the question of chief importance arising upon the record, and that the said statements were not admissible in evidence against an innocent purchaser for value before maturity of funding bonds containing such recitals as those contained in the bonds in controversy. The said honorable Circuit Court of Appeals reached its said conclusion upon the assumption that a certain other document offered in evidence by your petitioner at said trial, to wit, a certified copy of the record of proceedings of the Board of County Commissioners of Gunnison County under the act of February 21, 1881, was contradictory in its character and con-

tents to the contents of the said semi-annual statements, and that, as between the two said statements, that made under the act of February 21, 1881, was the only statement, if any, which the Legislature intended should be consulted by warrant holders or other persons who might be concerned in the issuance of funding bonds. Yet your petitioner alleges that the said honorable Court does not in its opinion in said cause point out or define any contradiction between the said semi-annual statements and the said statement under said act of February 21, 1881; that the said honorable Court of Appeals also determined that the decision of this honorable Court entitled Sutliff against the Commissioners of Lake County, 147 U. S., 230, is not applicable to the holders of bonds under the funding act of the State of Colorado of February 21, 1881, but only those statements required to be kept by the provisions of said act are binding upon the holders or purchasers of funding bonds issued thereunder, if, indeed, such persons are chargeable with notice of certificates or statements required by either of them; that, in discussing the latter propositions, the said honorable Circuit Court of Appeals expressed the opinion that the record made by the Board of County Commissioners disclosed no facts rendering the said bonds void in the hands of an innocent purchaser for value, notwithstanding it appears that the said certificate showed an indebtedness on August 21, 1882, far in excess of the limit placed upon the power of counties to incur indebtedness for any purpose by the provisions of Section 6 of Article XI. of the

State Constitution; that the said honorable Court did also determine that because the said bonds on their face purported to be funding bonds, issued for valid floating indebtedness, such recital would not create a new debt, and, therefore, a purchaser of said bonds who examined one of them, or the whole issue, for that matter, in the light of the constitutional provision and the certificate, would have been unable to say that the recital was false and that the bonds were void for the reason that the entire debt certified to by the Board might have been created before the assessed value of county property reached the million-dollar mark, until which time there were no restrictions upon the power of the county to contract debts. As a consequence, the said honorable Court declared the result from that view of the case to be, that as against a *bona fide* holder of funding bonds in controversy the certified copy of the proceedings of the Board of County Commissioners became material testimony.

Your petitioner further avers that the said honorable Circuit Court of Appeals in its said opinion declares the action of the Court below, in permitting your petitioner at said trial to introduce certain lists of county warrants surrendered to the county in exchange for the bonds in suit with others, to have been erroneous, because such testimony could not affect the rights of a *bona fide* purchaser of said bonds, who relies upon their recitals for his protection, and that the testimony contained in the record showed, without contradiction, that the plaintiff was a *bona fide* holder

when the suit was brought of at least five of the bonds in controversy, although, as to the other five, the said honorable Court does not undertake to determine, on the facts preserved in the record, whether the said plaintiff in error was or was not a *bona fide* holder, but declared that the question was one requiring the consideration of a jury.

Your petitioner respectfully complains that great and manifest error appeareth in said decision as to each and every of the propositions by it announced as hereinbefore recited and as appears therein; and it alleges for such errors the following:

1. The said Circuit Court of Appeals conceded the soundness of the contention made by your petitioner at the hearing of said cause, as well as in its printed briefs, that inasmuch as the bill of exceptions did not purport to contain all the evidence, the action of the lower Court, in directing a verdict for the defendant, could not be reviewed, nor any exceptions considered which were taken to the charge of the trial Court. Notwithstanding this position, the said Court in effect reversed the case, *for reasons appearing upon the face of the bill of exceptions and concerning the testimony*. It declares that the record made by the Board of County Commissioners certifying the total amount of county indebtedness contained no recital binding upon a *bona fide* holder for value, of the bonds in suit, and also that the plaintiff in error was a *bona fide* holder of at least five of the bonds represented in the action; hence, it concluded that the trial Court erred in directing a

verdict under these circumstances for the defendant. We cannot see how this conclusion is consistent with the concession made by the Court, of the soundness of our objection to the consideration of errors assigned upon a bill not purporting to contain all the evidence. The Court of Appeals, while admitting that the action of the lower Court under such circumstances, in directing a verdict for the defendant, cannot be reviewed, nevertheless does review and reverse it. Why the Court should say that the items of proof admitted could not bind by their disclosures a *bona fide* holder and that the testimony contained in the present record shows without contradiction that the plaintiff was a *bona fide* holder, when the record does not purport to contain all the evidence, and when such defect is fatal to the consideration of the lower Court's action in directing a verdict, is incomprehensible.

2. The question of chief importance arising upon the record, in the opinion of the Court of Appeals, was the introduction of the semi-annual statements of the condition of the county. They were held to be inadmissible against an innocent purchaser for value, before maturity of funding bonds containing such recitals as appear in the bonds in controversy. The converse of this proposition should be equally true, to wit, that the admission of these statements against those who are not innocent purchasers is not error. Yet the Court, upon a defective bill of exceptions, and in violation of the rule that all presumptions of proofs submitted at the trial will be made to support the

action of the Court, determines that the plaintiff in error was an innocent purchaser. This action of the said Court gives the same force and vitality to a bill of exceptions which does not contain all of the testimony which is given to one that does. Such a conclusion, we think, is opposed to the reasoning of those cases decided by this honorable Court in which defective bills of exceptions are held to conclude the parties relying upon them from the relief they seek.

3. The said Court erred in holding that the said semi-annual statements were not admissible in evidence against an innocent purchaser for value before maturity of funding bonds containing recitals like those in controversy. These semi-annual statements are required to be made by all counties, whether indebted or otherwise. It is a matter of general law; it is not a specific requirement appearing in a statute authorizing the creation of any particular form of debt, the issuance of bonds for any particular purpose, or the funding of general obligations of a county. It is not peculiar to building bonds, road or bridge bonds, or funding bonds; it is of universal application. It bears the same relation to the liabilities of a county that the statute requiring records of assessed valuations bears to the assets of a county. It is a record public in its character, of which all are bound to take notice, which speaks for itself, and which, in the language of Mr. Justice Matthews, in Dixon County vs. Field, 111 U. S., 95, "is extrinsic, proves itself by inspection, and concludes all determinations that contradict it." The decision of the

Court of Appeals, in holding that said statements were not admissible, is in conflict with the opinion of this honorable Court in the case of Sutliff against Lake County Commissioners, 147 U. S., 230, which involved the admission of this identical evidence, the only difference between the two cases being that Sutliff's bonds were for building roads and bridges, while those of the plaintiff in error are funding bonds. It is quite true that the recitals on the face of the two classes of bonds are different, but no recital appearing on the face of a bond can neutralize the obligation of notice arising from recorded facts provided for by the Constitution and by statute, and relating to assessed valuations on the one hand and outstanding liabilities on the other. If the rule were otherwise, the most solemn facts could be swept aside by a contradictory recital, and every constitutional and statutory safeguard for the protection of taxpayers would be neutralized by the edict of a dishonest, negligent or irresponsible official.

4. The said honorable Court erred in declaring the Sutliff case to be inapplicable to the one at bar, because the bonds in the Sutliff case were issued under the legislative act of March 24, 1877, and not under the funding act of February 21, 1881. This reasoning is unsound, because it implies that the act of March 24, 1877, was a specific act authorizing the issuance of building bonds, and that the semi-annual statements required by that act were intended to constitute a record for that purpose only; whereas, the act, as we have before stated, is one relating generally to county

government, and requiring these statements to be kept under any and all circumstances, and constitutes them a standing record of the county's financial condition binding alike on those having actual and those having no knowledge of their contents. There is no statement in the Sutliff case which warrants the inference that the recognition by this Court of the binding character of these statements is limited to that class of individuals who hold or may become the owners of building and bridge bonds only.

5. The said Court erred in holding that the Sutliff case should not be applied to a case like the one in hand where the bonds contain a certificate that the total amount of the issue does not exceed the limit prescribed by the Constitution of the State of Colorado. Why it should not be so applied we cannot understand. If these statements constitute a public record, which is "a fact extrinsic and one which determines itself, and one also which concludes all determinations that contradict it," then it were idle to say that its binding character depends not upon the fact itself, but upon the recitals contained in a bond the enforcement of which is attempted regardless of the record.

The position assumed by the honorable Court of Appeals is directly opposed to the decisions of this honorable Court upon this subject, from the case of Dixon County vs. Field down to the present time, the only apparent exception being Chaffee County vs. Potter, 142 U. S., 355, in which the

existence of this statute was not even called to the attention of the Court.

6. The said Court also erred in the following conclusion: "When, as in the present case, it appears that there are two acts passed at different times, each making provision for an official statement of the county indebtedness to be made at different times, one of which statements is required to be made with express reference to an issue of bonds, and as one of the preliminary statements to that end, we think it is reasonable to conclude that a purchaser of the bonds is at most only charged with the duty of examining the latter statement."

This doctrine would be true if the two statements required by the different acts were each special in their character. Where, however, one is general, and must be made under all circumstances, whether bonds are to be issued or not, the second is at best but supplementary to it. Indeed, it is reasonable to assume that the second must be made from the first, for the former stands as the recorded condition of the county, and presumptively correct. We do not believe that because a special law makes provision for the recording of a certificate of indebtedness, it neutralizes to any degree the effect of a general law, making provision for recorded semi-annual statements. The latter is as binding upon those interested in the operations of the special act as it is upon all other classes of people.

7. But the Court proceeds with an assumption not warranted by the facts in the record or

anywhere shown by the opinion of said Court to exist. It declares that "If a discrepancy exists between the two statements, it is clear, we think, that that statement should govern and control which was made with express reference to an issue of bonds, and presumably for the information of the bondholder, and that the bondholder should only be charged with the duty of examining the statement on which he has a right to rely."

The Court refrains from deciding whether the statement required to be made by the specific act is admissible against an alleged *bona fide* holder of bonds issued under said act, because it assumes that the record made under the specific act in this case disclosed no facts rendering the bonds void in the hands of the innocent purchaser for value. We deny absolutely that any discrepancy whatever exists between the statement now under consideration and those made semi-annually under the act of March 24, 1877. Both show the amount of indebtedness to have been grossly in excess of the constitutional limitation, and if these records were intended for any purpose whatever, they must have constituted a recorded and official warning to all would-be holders of bonds thereafter to be issued, that, taken in connection with the recorded valuations of the county, they represent a debt absolutely void, for want of power on the part of the county to contract it.

The honorable Court of Appeals avoid this consequence by referring to the recitals of the bonds, one being that the total amount issued did not exceed the constitutional limit of indebted-

ness, the other being that the bonds on their face purported to be funding bonds for valid floating indebtedness, which would not create a new debt. In other words, refuge is again taken in the recitals of the bonds, and these, after all, constitute the basis of the opinion.

We suggest it would have been better to have declared in direct terms that the recitals in the bonds render nugatory all constitutional and statutory limitations as to amounts and provisions for recorded notice of existing facts of valuation and liability.

8. The said honorable Court erred in holding that "A purchaser of the bonds who examined one of them, or the whole issue, for that matter, in the light of the constitutional provision and the certificate made by the Board, would have been unable to say that the recital was false, and the bonds were void, for the reason that the entire debt certified to by the Board might have been created before the assessed value of county property reached the million-dollar mark, until which time there were no restrictions upon the power of the county to contract debts." No better reason than this could be given for the necessity of requiring all purchasers to be bound by the semi-annual statements provided for by the act of March 24, 1877. The Court, however, not only at this, but at all times in its opinion, seems to have lost sight of the importance of the record of assessed valuations, which must be conceded to be binding upon all persons, in view of past decisions of this and other Courts upon the subject. A pur-

chaser of one of the bonds or all of them, with the assessed valuations of the county in one hand and the recorded certificate of the Commissioners under the Act of February 21, 1881, in the other, would surely, by reason of the arithmetical calculation he would naturally make under the requirements of the State Constitution, be put upon inquiry as to the time when the enormous debt shown by the certificate was contracted. This would lead him to an examination of the semi-annual statements, and they, in turn, would give him all needed information.

9. The Court below erred in its assumed reliance, among others, upon the case of Chaffee County vs. Potter, 142 U. S., 355, in support of its opinion. The facts embodied in the two cases were entirely dissimilar, except in so far as the recitals upon the face of the bonds are concerned. The Potter case was determined upon demurrer to the complaint. Neither the recorded certificate required by the act of February 21, 1881, nor the semi-annual statements required by the general law of March 24, 1877, were pleaded or for the moment considered.

The difference which distinguished the Sutliff from the Potter case was as plainly—if not more plainly—apparent in the case at bar.

10. The Court below committed error in holding that the trial Court erred in permitting your petitioner to introduce three lists of county warrants which had been surrendered to the county by the owners and holders thereof, when the ten funding bonds involved in the present suit were

issued. These warrants were introduced largely for the purpose of showing that the issuance of the bonds constituted practically but one transaction, and that no particular warrant went into any particular bond; that warrants illegal and warrants legal were probably mingled inextricably together, and that, as a consequence, the plaintiff in error could not contend, as it did contend, that the warrants exchanged for the bonds in suit were valid, lawful and binding upon the County of Gunnison. They were not introduced, as the Court of Appeals assumes, to contradict and overcome the recitals which the bonds in controversy contained. Offered for the purposes intended, they were clearly admissible, and their purpose could not have been misunderstood by the plaintiff in error at the time of their introduction.

11. The Court below also erred in declaring that the testimony contained in the record showed without contradiction that the plaintiff was a *bona fide* holder when the suit was brought of at least five bonds involved in the present controversy, and, therefore, the case should be reversed. The Court does not pretend to assume what testimony was left out of the record. It admits that all intendments supporting the action of the trial Court will be made, where a bill of exceptions does not purport to contain all the testimony. It declares that under such circumstances the action of the trial Court in directing a verdict will not be disturbed. Notwithstanding this, it deliberately finds that the testimony in the record shows the plaintiff to be a *bona fide* holder, and, therefore,

the case should be reversed. This is in palpable contradiction of the precedents made by itself, and of those made by this Court which should govern it. But we deny that the testimony shows that the plaintiff was a *bona fide* holder. Standley, the assignor of the plaintiff in error, declares that he turned in his warrants for bonds 9 to 13, and that he bought bonds 63 to 66 and bond number 98. (Transcript, fol. 67.) He knew when he bought them, and from the number, that at least $98,000 worth of bonds of series A had been issued. He knew also that there were two other series of bonds, which made the amount greater than $98,000. (Transcript, fols. 76–78.) He therefore knew from the facts disclosed by the record concerning valuation and amount of debt, and of which he was bound to take notice, that the bonds by him purchased were in excess of the constitutional limitation and absolutely void.

It follows, therefore, that whether this fact be considered from the testimony disclosed by the bill of exceptions, or whether it be assumed from the testimony which the bill does not disclose, the finding of the Court upon the subject is erroneous. Why, under these circumstances, the question of *bona fides* as to five of the bonds is one which requires the consideration of the jury, the Court of Appeals does not pretend to say.

12. The Court below erred in failing to give consideration to the recitals of the certificates of assessed valuation of the county. The effect of these assessments upon the case is entirely overlooked, notwithstanding their tremendous import-

ance. Its failure to recognize the doctrine established by this Court that these assessments are conclusive upon so-called *bona fide* bondholders, as upon all others, has resulted in great and manifest injury to your petitioner.

13. The Court of Appeals erred in neglecting or refusing to follow the ruling and decisions of this honorable Court in cases similar to the one at bar. The said cause was prepared and tried by your petitioner in strict accordance with the doctrine announced by this honorable Court in the cases of Town of Coloma vs. Eaves, 92 U. S., 484; Buchanan vs. Litchfield, 102 U. S., 287; Dixon County vs. Field, 111 U. S., 83; Lake County vs. Graham, 130 U. S., 674; Lake County vs. Rollins, 134 U. S., 662; Chaffee County vs. Potter, 142 U. S., 355; Sutliff vs. Lake County Commissioners, 147 U. S., 230; Nesbit vs. County of Riverside, 144 U. S., 610; Hedges vs. Dixon County, 150 U. S., 182, and other cases, recognizing, following and approving decisions hereinabove cited.

If the decision of which your petitioner complains is permitted to stand, and this honorable Court shall decline to review the same, it will, as a precedent, practically result in the establishment of legal principles wholly inconsistent with those announced by this honorable Court, and be productive not only of great injury and injustice to the taxpayers of the County of Gunnison, but to all people similarly situated, where holders of so-called obligations incurred by negligent and dishonest officials on the one side and speculators in municipal securities upon the other have sought

to establish grievous and burdensome debts in flagrant disregard and violation of the most solemn prohibitions of statutes and constitutions.

Your petitioners, therefore, respectfully pray this honorable Court to issue a writ of *certiorari* to said United States Circuit Court of Appeals for the Eighth Judicial Circuit, requiring it to certify to this Court under Section 6 of said act of Congress, approved March 3, 1891, a true, full and complete record of said cause of E. H. Rollins & Sons, plaintiffs in error, vs. The Board of County Commissioners of the County of Gunnison, defendant in error, and numbered 856 on the dockets of said Court, with all convenient speed, that this honorable Court will review the same, and determine whether error has been committed by the said Court in its said decision as herein alleged, and to set at rest and finally determine the matters and things in controversy between the parties hereto, as hereinabove at length set forth, and in duty bound your petitioner will ever pray.

THOMAS C. BROWN,
CHARLES S. THOMAS,
WILLIAM H. BRYANT,
HARRY H. LEE,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
DISTRICT OF COLORADO, } ss.

On this day personally came .....

....., who being first duly sworn according to law, deposes and says that he is the chairman of the Board of County Commissioners of Gunnison County, that he has read the above and foregoing petition for a writ of *certiorari* in said cause, and that the matters and things therein set forth are true, according to the best of his knowledge, information and belief.

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